

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-3397

United States of America,

Appellee,

v.

James Edward Gibson,

Appellant.

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Appeal from the United States

District Court for the

Southern District of Iowa.

[UNPUBLISHED]

Submitted: March 6, 2003

Filed: March 10, 2003

Before HANSEN, Chief Judge, MURPHY, and RILEY, Circuit Judges.

PER CURIAM.

James Edward Gibson pleaded guilty to conspiring to distribute 500 grams or more of a mixture containing methamphetamine, and measurable amounts of cocaine and marijuana, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A), (b)(1)(C), and (b)(1)(D). The district court¹ found that Gibson was responsible for over 5 grams of actual methamphetamine, and sentenced him to 262 months imprisonment and 8 years supervised release.

¹The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

On appeal, counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing the district court erred in its drug-quantity calculation. Gibson has filed a pro se supplemental brief, also challenging the drug-quantity calculation. Having carefully reviewed the record, we conclude there was no clear error. See United States v. Santana, 150 F.3d 860, 864 (8th Cir. 1998) (standard of review). In his plea agreement Gibson stipulated that he was responsible for 27.18 grams of a mixture containing methamphetamine; at his sentencing hearing a former state criminalist testified that, following laboratory protocol, she had thrice tested a single sample of the methamphetamine and had found an average purity of 20%; and even factoring in the laboratory's 5% margin of error, the stipulated quantity of methamphetamine mixture would yield more than 5 grams of actual methamphetamine.

We have further reviewed the record independently under Penon v. Ohio, 488 U.S. 75 (1988), and have found no nonfrivolous issues. Accordingly, we affirm. We also grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.